

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 41

THE VESSEL "ABBY DODGE," A. KALIMERIS, CLAIMANT,
APPELLANT.

vs.
THE UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF FLORIDA.

FILED APRIL 30, 1912.

(21,640.)

(21,640.)

SUPREME COURT OF THE UNITED STATES.

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THE VESSEL "ABBY DODGE," A. KALIMERIS, CLAIMANT,
APPELLANT,

vs.

THE UNITED STATES.

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U. S. District Court, Southern District of Florida.

Be it remembered, That on the 6th day of October, 1908, came the United States of America, by its Proctor, John M. Cheney, and with the Clerk of said Court its libel, against the Vessel "Abby Dodge," her engines, boilers, etc., in words and figures following,

UNITED STATES OF AMERICA

vs.

THE VESSEL "ABBY DODGE."

UNITED STATES OF AMERICA,

Southern District of Florida, ss:

Before the Honorable James W. Locke, Judge of the District Court for the Southern District of Florida:

The libel of information of Richard P. Marks, Assistant Attorney of the United States for the Southern District of Florida, who prosecutes on behalf of the said United States, and being present here in Court in his own proper person, in the name and on behalf of the said United States against the vessel "Abby Dodge," her boats, tackle, apparel and furniture, and all persons having any interest therein, in a cause of collection of penalty imposed and forfeiture, civil and maritime, alleges and informs as follows:

That there was at the port of Tarpon Springs, within the Southern District of Florida, on the 28th day of September, A. D. 1908, landed from the said vessel "Abby Dodge," one thousand two hundred and twenty-nine bunches of sponges taken by means of diving and diving apparatus from the waters of the Gulf of Mexico and the straits of Florida; that said sponges so taken as aforesaid, were taken at a time other than between October 1st and May 1st of any year, and at a time subsequent to May 1st, A. D. 1907.

And the said Assistant Attorney of the United States who prosecutes as aforesaid for the said United States, says upon information and belief, that all and singular the premises are true; that said vessel aforesaid was used and employed in violation of the provisions of the Act of June 20, 1906, entitled "An Act to regulate the landing, delivery, cure, and sale of sponges," in the manner aforesaid; and that such violation occurred within the admiralty and maritime jurisdiction of the said United States and of this Court.

Wherefore, the said Assistant Attorney of the said United States for the Southern District of Florida, for the said United States, prays that a writ of attachment and monition in due form of law, according to the course of this court in such cases, may issue against said vessel "Abby Dodge," her boats, tackle, apparel and furniture, and all persons having any interest in the same may be cited to appear and answer all and singular the matters aforesaid; and that this court may decree the payment of the penalty aforesaid, with interest and costs, and that the said vessel may be forfeited, as to this Court

shall seem meet; and that the said United States may have such other and further relief as in law and justice it may be entitled to receive.

RICH'D P. MARK,
Assistant U. S. Attorney.

Endorsed: 43. L. 1. In the District Court of U. S. So. Dis. of Florida. United States vs. The Vessel "Abby Dodge." Libel. Filed October 6th, 1908. E. O. Locke, Clerk.

3 And thereafter on the 7th day of October, A. D. 1908, there was entered in said cause an order as follows:

U. S. District Court, Southern District of Florida.

UNITED STATES
vs.
THE VESSEL THE "ABBY DODGE."

Ordered, That Attachment and Monition be issued herein, returnable Nov. 2nd, 1908, at Tampa, Fla.; that Monition be executed by delivering a copy to the Master, Agent or Owner of said vessel, or posting a copy on said vessel's mast and by publishing notice fourteen days in the Tampa Times.

Entered of Course.
October 7th, 1908.

E. O. LOCKE, *Clerk.*

4 And thereafter, to-wit: on the 7th day of October, A. D. 1908, there was issued in said cause attachment, pursuant to the foregoing order and on the 15th day of October aforesaid the same was returned endorsed as follows, viz:

Received the within Attachment on October 9th, 1908, and on Oct. —, 1908, *seized* the within named vessel Abby Dodge and have it now in custody and placed in charge of A. Klamais.

JOHN F. HERR,
U. S. Marshal,
By C. B. BRISTOL, *Dep't.*

And on the said 7th day of October A. D. 1908 there was issued in said cause in *pru*surance of the foregoing order, Monition, which said monition was thereafter to-wit: on October 15th 1908, returned endorsed as follows:

"Received the within monition Oct. 9th, 1908, and on Oct. 9th 1908 served the same on A. Kalameis Ag't of the within named vessel Abby Dodge, by giving to him a certified copy thereof at Tarpon Springs Fla.

JOHN F. HERR,
U. S. Marshal,
By C. B. BRISTOL, *Deputy.*

5 And thereafter on the 26th day of October, A. D. 1908, there was filed in said cause a claim as follows:

In the District Court of the United States, Southern District of Florida. Libel in Admiralty.

THE UNITED STATES
vs.
THE VESSEL "ABBY DODGE."

And now comes A. Kalimaris, Master, owner, agent, of said vessel, and claims said Abby Dodge, her tackle, sails, apparel, boats, furniture, and other appurtenances as agent of the lawful owner thereof, and that he is duly authorized by the owner thereof to put in claim in behalf of the said vessel in this suit.

A. KALIMARIS.
N. G. ARPAUE.

Sworn and subscribed to before me this 24th day of October A. D. 1908.

[NOTARIAL SEAL.] JULIUS H. SMITH, [SEAL.]
*Justice of Peace, 14th District, in and for
Hillsborough County, Florida.*

Endorsed: 43. U. S. District Court, Southern District of Florida. United States vs. Vessel "Abby Dodge." Claim of A. Kalimaris. Filed this 26th day of October, A. D. 1908. E. O. Locke, Clerk, by H. L. Crane.

6 In the District Court of the United States, Southern District of Florida. In Admiralty.

UNITED STATES OF AMERICA
vs.
VESSEL ABBY DODGE.

To the Honorable James W. Locke, Judge of the District Court of the United States in and for the Southern District of Florida:

A. Calumeris, Claimant excepts to the libel of the United States of America in the above entitled cause.

First. Because the said libel does not state any case under which the said vessel can be fined or forfeited.

Second. Because the said act of Congress of June 20th, 1906, entitled, "An Act regulating the landing, delivery, cure, and sale of sponge," is not within the powers granted to the United States by the Federal Constitution.

Third. That the said Act of June 20th, 1906, is unconstitutional, and cannot be enforced for the following reasons.

1st. Because Congress has no power under the Constitution to

legislate against the landing, delivery, cure and sale of sponge in any Port of the United States of America.

2nd. Because said act of June 20th, 1906, is discriminative, and applies only to sponges caught by diving apparatus, and discriminates against any person or vessel that should land, deliver, cure or sell sponges caught in this way.

7 3rd. Because said act attempts to legislate upon the subject of catching sponges within the waters of the State of Florida and other states bordering on the Gulf of Mexico, when such power is one of the reserved powers of the States.

4th. Because said act indirectly attempts to prohibit the catching of sponges by diving apparatus within the waters of the several States, and also in the waters of high seas, which prohibition is not within the powers granted to the general government under the Constitution of the United States.

E. R. GUNBY,

WM. HUNTER,

Proctors for Claimant.

Endorsed: 43. U. S. District Court, Southern District of Florida. United States vs. Vessel "Abby Dodge." Exceptions to Libel. Filed this 2nd day of November, A. D. 1908. E. O. Locke, Clerk, b. H. L. Crane.

8 And thereafter on the 9th day of January, A. D. 1909 there was filed in said cause an order as follows:

In the District Court of the United States in and for the Southern District of Florida.

THE UNITED STATES

vs.

VESSEL "ABBY DODGE."

This cause coming on to be heard upon the exceptions to the libel herein, and having been fully heard and duly considered, it is ordered that said exceptions be overruled, and the respondent have until the 1st day of February to answer as advised.

January 9th, 1909.

JAMES W. LOCKE, *Judge.*

Endorsed: 43. U. S. District Court, Southern District of Florida. U. S. vs. "Abby Dodge." Order overruling exceptions. Filed January 9, 1909. E. O. Locke, Clerk.

Opinion.

This matter comes on to be heard upon the exceptions to the libel which was filed under the Act of June 20th, 1906, Chapter 344, 34 Statutes at Large, page 313, purporting to be an act for the pro

tection of the Sponge Fisheries on the coast of Florida. These exceptions raise the question of the constitutionality of the Act, in that it does not come within the power or rights granted to the Federal Government, and is in conflict with the reserved rights of the States.

9 Along the western coast of Florida there are found submerged reefs, and rocky and so called "bar bottoms," extending from the shore out many miles into many fathoms of water, upon which grow the sponges, known as "grass," "glove," "boat," "yellow," and "sheeps wool," the latter being the most valuable, but all articles of commerce to a considerable extent. The manner of gathering these sponges, for upwards of fifty years, has been by means of hooks upon long poles, used by a man lying over the bow of a small boat looking through a water glass, by means of which the bottom is clearly seen, and the larger sponges hooked from the bottom. These poles are used sometimes to the length of upwards of sixty-five feet, but the majority or average is about forty-five feet. The growth of sponges differs materially according to the character of the bottom; in some places a sponge of the diameter of from eight to ten inches having been known to grow within a space of eighteen months or two years, while in other places the growth is very slow. This business has for many years given occupation to numerous vessels and a large number of men along the west coast of Florida, as many as a thousand or twelve hundred men having been engaged in the business, making a fair livelihood.

Recently there has been introduced a system of gathering these sponges by means of a diving outfit, where the diver with a full diving suit goes down from a boat equipped with an air pump, and remaining many hours under the water, walks through and upon the sponge beds and gathers by hand the sponges of sufficient size.

It is contended, not without reason, that the walking of these divers over the sponge beds with the shoes with heavy lead soles, has had a disastrous effect upon the growth and supply of
10 sponges; that while a few large ones are being gathered, thousands of small ones are killed, until the growth in many places has been nearly exterminated, and there is great danger of the utter destruction of the entire industry.

While, of course, this is a matter solely for the legislative body to consider, and not for the courts, it is adverted to for the purpose of inquiry as to what may have been the object of the Act.

The Act in question is in no way in conflict with or opposed to any legislation of the State of Florida, but is in reality in aid of, and has for its object the carrying out of the same policy adopted by the State, which has provided for the preservation of the sponge supply, in Sec. 3794 of the General Statutes of Florida, which provides—"whoever gathers or catches sponge in and upon any of the grounds known as sponging grounds along the coast of Florida from Pensacola to Cape Florida, by diving either with or without a diving suit or armor, shall be punished, etc.

It is contended that the States have exclusive jurisdiction over the navigable waters within their limits, but in the numerous cases cited

to sustain that contention, it will be observed that none of these cases relate to any waters except those actually within the limits of the State, and not in any case extending to the high seas; and in such cases the reservation is made that control of the waters within the Admiralty and Maritime jurisdiction is permitted to the states only where Congress has not acted.

The only question presented now is as to the constitutional-ty of the Act of Congress under which the libel is brought, and in the determination of this question every doubt must be considered in favor of its constitutional-ty.

It is considered that the declaration of the Supreme Court in the case of *Turner vs. Williams*, 194 U. S. 279-290, "that every sovereign nation had the power, as inherent in sovereignty and essential to self preservation, to forbid the entrance of foreigners within its domains, or to admit them only in such cases and upon such conditions as it may see fit to prescribe" extends not only to the exclusion of persons coming from without its domains, but to all matters of commerce, and, things, the admission of which is injurious and inimical to the best interest of the nation, whether such objection arises as well from the locality from which the article comes, or its injurious influence after its introduction into the United States. It is for the Congress to determine the best means of protecting the highest interest of the nation.

This principle was recognized in the legislation regarding the protection of the Seal fisheries in the Behring Sea. It was not that the seal skins, so captured, would be injurious to the health or morals if brought into the United States, but Congress saw fit to protect an industry beneficial to the people of the country, not under the interstate Commerce Clause of the Constitution, but under its inherent power as a nation to protect the interests of its people.

This is the principle sought to be acted upon here. The mode only differs according to the circumstances of the occasion.

12 There is no effort to interfere with the action of foreign nations upon the high seas, but prohibits the bringing into the United States the result of the acts which are ruinous to a valuable industry of the nation.

It is considered this Act is reasonable to a degree of liberality in permitting the use of diving in water more than fifty feet deep, but only excluding it from the places where it appears that without doubt all the benefits can be derived by others, without in any way injuring the industry or ruining the means of sustenance for several hundred families.

The exceptions to the libel are overruled, and the Claimants given until the *day* day of February, 1909, to answer as advised.

January 9, 1909.

JAMES W. LOCKE, *Judge*.

Endorsed: "Opinion on Order on Exceptions." Filed Jan. 9, 1909. E. O. Locke, Clerk.

- 13 In the District Court of the United States, Southern District of Florida. In Admiralty.

UNITED STATES OF AMERICA

vs.

VESSEL "ABBY DODGE."

Now to-wit; On the 20th day of March A. D. 1909, this cause having been heard upon the exceptions to the libel, and after argument of Proctors for the respective parties and due deliberation thereof, the said exceptions having been overruled, and the claimants having announced in open court that they desire to stand upon said exceptions, and having declined further to plead.

It is now ordered, adjudged and decreed that the said vessel "Abby Dodge" pay a fine of One Hundred Dollars, and the costs of this proceedings to be taxed by the Clerk.

JAMES W. LOCKE, *Judge.*

Endorsed: In the District Court of the U. S. Southern District of Florida. United States of America vs. Vessel "Abby Dodge." Decree. Filed March 20th, 1909. E. O. Locke, Clerk.

- 14 In the District Court of the United States, Southern District of Florida. In Admiralty.

UNITED STATES OF AMERICA

vs.

VESSEL "ABBY DODGE."

To John M. Cheney, District Attorney:

You will please take notice that the claimants in the above named suit hereby appeal to the Supreme Court of the United States from the final decree entered herein on the 20th day of March, A. D. 1909.

E. R. GUNBY,

WM. HUNTER,

Proctors for Claimants.

Endorsed: 43. L. 1. In the District Court of the United States, Southern District of Florida. United States vs. Vessel "Abby Dodge." Notice of Appeal. Filed March 26th, 1909. E. O. Locke, Clerk.

15 In the Supreme Court of the United States. In Admiralty.
VESSEL "ABBY DODGE," A. KALAMERIS, Complainant, Appellant,
vs.
UNITED STATES OF AMERICA, Appellee.

To the Honorable Justices of the Supreme Court of the United States:

Your petitioner, the claimant, and appellant herein, respectfully shows as follows:

First. That on or about the 6th day of October, A. D. 1908, the United States filed a libel in the District Court of the United States for the Southern District of Florida, against the above named vessel "Abby Dodge," for a fine or forfeiture, alleged to be due the United States, with interest and costs, as by reference to said libel more fully appears.

Second. That on the 2nd day of November, A. D. 1908, the claimant herein duly filed his exceptions to said libel, alleging that the Act of Congress of June 20th, 1906, under which said libel was filed, was unconstitutional, as by reference to said exceptions more fully appear.

Third. That on the 20th day of March, A. D. 1909, the said cause came on for a hearing before the Honorable James W. Locke, Judge of said District Court, and such proceedings were had that on the said date, a final decree was made and entered in said cause, whereby it was adjudged that the said vessel should pay a fine of One Hundred Dollars, and the costs to be taxed by the Clerk.

16 Fourth. That the above name- claimant is advised and avers, that said final decree is erroneous in that said Act of Congress of June 20th, 1906, under which said libel was filed, is unconstitutional and void.

For this and other reasons the above named claimant appeals from said final decree to the Supreme Court of the United States, and under said appeal intends to seek a new decision on the law, upon the proceedings in said District Court, and prays that the record aforesaid may be returned to the Supreme Court of the United States, and that said decree may be reversed.

EDWARD R. GUNBY,
Proctors for Claimant.

43. L. 1. In the Supreme Court of the United States. Vessel "Abby Dodge," A. Kalameris, complainant, Appellant, vs. United States of America, Appellee. Petition of Appeal. Filed March 26th, 1909. E. O. Locke, Clerk. E. R. Gunby and William Hunter, Proctors for Claimant.

- 17 In the District Court of the United States in and for the Southern District of Florida.

UNITED STATES OF AMERICA

vs.

VESSEL "ABBY DODGE," A. KAMALRIES, Claimant.

Now comes the claimant, by his proctors, and assigns as error to the ruling of the court below.

First. That the Court erred in over-ruling the exceptions of the claimant to the libel of the libellant.

Second. That the Court erred in entering a judgement for a fine and costs against the said vessel.

EDWARD GUNBY,

Proctors for Claimant.

Endorsed: In the District Court of the United States, Southern District of Florida. United States of America vs. Vessel "Abby Dodge," A. Kamalries, Claimant. Assignment of Error. E. R. Gunby and William Hunter, Proctors for Claimants. Filed Mar. 30, 1909. E. O. Locke, Clerk.

- 18 In the District Court of the United States, Southern District of Florida. In Admiralty.

UNITED STATES OF AMERICA

vs.

VESSEL "ABBY DODGE."

Now on this 26th day of March, A. D. 1909, the claimants having filed a petition of appeal in the above entitled cause.

It is ordered that the said appeal shall operate as a supersedeas upon the filing of a supersedeas bond in the sum of Two Hundred Dollars, conditioned to pay the decree of this court in case the same shall be affirmed.

JAMES W. LOCKE, *Judge.*

Endorsed: 43. L. 1. District Court of the United States, Southern District of Florida. United States of America vs. Vessel "Abby Dodge." Order of Court Fixing Supersedeas Bond. Filed March 26th, 1909. E. O. Locke, Clerk.

Done in open Court: Honorable James W. Locke, Judge presiding, and entered on the Minutes, Page 420, Vol. "E" "Minute Book, New Series" U. S. District Court, Southern District of Florida.

19 In the District Court of the United States in and for the Southern District of Florida. In Admiralty.

UNITED STATES OF AMERICA

VS.

VESSEL "ABBY DODGE."

Know all men by these presents; That we, A. Kalimeris, as principal and N. G. Arfarag and Chas. Pope, as sureties, are held and firmly bound unto the United States of America, in the sum of Two Hundred Dollars, (\$200.00), lawful money of the United States, for the payment whereof well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally firmly by these presents.

Sealed with our seals this 7th day of April, 1909.

The condition of the above obligation is such that whereas on the 20th day of March, A. D. 1909, in the above stated cause, a decree was rendered against said vessel, for a fine of One Hundred Dollars (\$100.00), and costs of court to be taxed, and,

Whereas an appeal to the Supreme Court of the United States has been granted from said decree.

Now therefore if the obligors shall prosecute said appeal with effect and well and truly pay to the United States the said fine and costs in case the decree of the District Court is affirmed, then this obligation to be void, otherwise to remain in full force.

N. G. ARFARAG. [SEAL.]

A. KALIMERIS. [SEAL.]

CHARLES POPE. [SEAL.]

Signed, sealed in the presence of

D. E. LURDOS.

A. M. LOWE.

20 STATE OF FLORIDA,
Hillsborough County:

Before me, the undersigned authority, personally appeared A. Kalimeris and Charles Pope, who being duly sworn, says, each for himself, and not one for the other, that he is worth the sum of Two Hundred Dollars in visible property in said County and State, liable to execution.

A. KALIMERIS. [SEAL.]

CHARLES POPE. [SEAL.]

Subscribed and sworn to before me this 17th day of April, 1909.
[SEAL.]

A. M. LOWE,

Notary Public, State of Florida.

My commission expires September 20, 1909.

Approved April 20, 1909.

JAMES W. LOCKE, *Judge.*

(Endorsed:) No. 43. In the District Court of the United States, Southern District of Florida. United States of America vs. Vessel "Abby Dodge." Bond. Filed April 20th, 1909. E. O. Locke, Clerk.

21 United States District Court, Southern District of Florida.

UNITED STATES OF AMERICA

vs.

VESSEL "ABBY DODGE," A. KALIMERIS, Claimant.

I, Eugene O. Locke, Clerk of said Court hereby certify that the foregoing pages, in writing, type-writing, and partly written and partly type written, numbered from "1" to "20," inclusive, are a full, true and complete record of the above entitled cause, with the Assignment of Errors, and all proceedings had in said Court.

In testimony whereof I hereunto set my hand officially, and affix the seal of said Court at Jacksonville in said District this 21st day of April, A. D. 1909.

[Seal District Court of the United States, Southern
District of Florida.]

EUGENE O. LOCKE, *Clerk*.

Endorsed on cover: File No. 21,640. S. Florida D. C. U. S. Term No. 210. The Vessel "Abby Dodge," A. Kalimeris, claimant, appellant, vs. The United States. Filed April 30th, 1909. File No. 21,640.